



February 3, 2005

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: **EX PARTE**
IB Docket No. 01-185

Dear Ms. Dortch:

ICO Global Communications (Holdings) Limited (“ICO”) responds to an *ex parte* letter filed by Cingular Wireless (“Cingular”) on January 28, 2005, rehashing its argument that the Commission’s ancillary terrestrial component (“ATC”) rules fail to ensure that mobile satellite service (“MSS”) operators will provide “substantial satellite service.”¹ As discussed below, Cingular has presented no new facts warranting a reversal of the Commission’s well-considered determination that the existing ATC gating requirements are sufficient to ensure the provision of substantial satellite services. ICO’s response to Cingular’s request for additional ATC gating requirements is more fully set forth in ICO’s consolidated opposition to petitions for reconsideration of the ATC Order,² a copy of which is attached.

It is instructive to revisit the goals of the ATC proceeding. In authorizing ATC, the Commission intended to permit more flexible and efficient use of MSS spectrum.³ This additional flexibility, in turn, was designed to achieve a number of public interest benefits, including (1) remedying the signal problems that plague existing MSS systems; (2) promoting efficient use of MSS spectrum in areas where it otherwise would lie fallow; (3) ensuring that the

¹ See Letter from Brian F. Fontes, Cingular, to Marlene H. Dortch, Secretary, FCC (Jan. 28, 2005) (“Cingular Letter”).

² See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962 (2003) (“ATC Order”).

³ See *id.* ¶ 1.

full benefits of MSS remain available to rural and underserved areas; and (4) augmenting the capabilities of existing public safety, homeland defense, emergency service, and military systems.

Despite the Commission's adoption of rigorous ATC gating requirements that permit flexible spectrum use while ensuring substantial satellite service, Cingular suggests that the trend toward deploying geostationary satellite orbit ("GSO") MSS systems, in lieu of nongeostationary satellite orbit ("NGSO") MSS systems calls into question the MSS promise of providing service to rural areas.⁴ This claim is nonsense. Long before ATC was made possible, MSS operators deployed GSO systems that were fully capable of providing service to rural and underserved areas. In fact, the FCC rules generally require GSO MSS systems to "be capable of providing mobile satellite services on a continuous basis throughout the 50 states, Puerto Rico, and the U.S. Virgin Islands, if technically feasible."⁵ This required coverage area is substantially larger than the service area of any terrestrial system. Thus, Cingular's proposal to impose additional ATC gating requirements will have no effect on the existing capability of MSS systems, whether GSO-based or NGSO-based, to provide service to rural and underserved areas.

Moreover, Cingular's contention that licensees' business decisions to substitute a GSO system for an NGSO system "call into question the commitment of MSS licensees to provide 'substantial' satellite service" is completely unfounded.⁶ Both existing and prospective MSS operators have deployed or intend to deploy GSO systems for reasons unrelated to any intent to provide ATC. Whether MSS operators spend \$200 million or \$4 billion, as ICO has, to deploy satellite services to reach rural and underserved areas, they will serve the Commission's public interest objectives of authorizing MSS and ATC by filling a gap that terrestrial wireless operators have not closed despite having spent billions of dollars at auction, in the private marketplace, and on build-out costs. Terrestrial operators continue to bypass precisely those areas that satellite service is intended to reach.

The question is not whether the Commission has acted arbitrarily or capriciously in the ATC proceeding, but whether it should act arbitrarily and capriciously by abandoning its goals for ubiquitous telecommunications services in the United States, for the sole purpose of placating the anti-competitive views of terrestrial wireless interests toward satellite services. Given the unprecedented elimination of competition through consolidation in the terrestrial wireless industry, acceding to such demands could only harm consumers and thwart the Commission's goals for a diverse and competitive national communications infrastructure.

Finally, Cingular contends that ICO's application to modify its 2 GHz MSS system highlights the need to reconsider the exemption for personal data assistants ("PDAs") and other

⁴ See Cingular Letter at 2.

⁵ See 47 C.F.R. § 25.143(b)(2)(iv).

⁶ See Cingular Letter at 7-8.

computers from the integrated service requirement (the “PDA exemption”).⁷ Specifically, Cingular notes that ICO’s proposed GSO system is designed to operate with a variety of user terminals, including personal accessory devices connected to PDAs. Cingular, however, fails to explain how the proposed use of personal accessory devices and PDAs calls into question the Commission’s basis for adopting the PDA exemption. As ICO previously asserted in its consolidated opposition to petitions for reconsideration of the ATC Order, the Commission should avoid re-regulating customer premises equipment through rigid requirements that limit equipment features and design, restrict consumer choice, and increase consumer costs.⁸ Moreover, the PDA exemption is fully consistent with and supported by the record.⁹

In accordance with section 1.1206(b) of the Commission’s rules, an electronic copy of this letter is being filed.

Very truly yours,

/s/ Suzanne Hutchings Malloy

Suzanne Hutchings Malloy

Attachment

cc: Sheryl Wilkerson
Stacey Fuller
Samuel Feder
Barry Ohlson
Paul Margie
Bryan Tramont

⁷ *Id.* at 6.

⁸ *See* Consolidated Opposition of ICO, IB Dkt. No. 01-185, at 3 (Aug. 20, 2003).

⁹ *Id.* at 3-4.